

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

TAICHIN PREYOR,

Petitioner,

- vs. -

LORIE DAVIS, Director, Texas Department  
of Criminal Justice, Correctional Institutions  
Division,

Respondent.

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Civil No. SA-10-CA-857-FB

\* DEATH PENALTY CASE \*

**\*TAICHIN PREYOR IS SCHEDULED TO BE  
EXECUTED ON JULY 27, 2017\***

**PETITIONER’S MOTION FOR LEAVE TO EXCEED PAGE LIMIT**

Petitioner TaiChin Preyor hereby moves for leave to file his Motion for Relief From Judgment Pursuant to Rule 60 of the Federal Rules of Civil Procedure (“Rule 60 Motion”) in excess of the page limits imposed under Local Rule CV-7(d)(3), and would respectfully show the following:

1. Attached hereto as Exhibit 1 is Petitioner’s Rule 60 Motion, seeking relief from the Court’s order and final judgment denying Petitioner’s petition for a writ of habeas corpus, Dkt. 21, 22.

2. Due to the lengthy factual and procedural background and complex legal issues relevant to the Rule 60 Motion, that Motion is 55 pages in length. Because the Motion is longer than the page limit established by Local Rule CV-7(d)(3), Petitioner requests leave of Court to exceed the page limitation.

3. Good cause exists for extending the page limitation. As set out fully in Petitioner's Rule 60 Motion, Petitioner's former attorneys perpetrated an egregious fraudulent scheme that deprived this Court and Petitioner of a full and fair presentation of his claims for federal habeas relief. To demonstrate that equitable relief from the judgment under Rule 60 is warranted, however, Petitioner must present the lengthy factual and procedural background relevant to his attorneys' fraud, in a case that began more than ten years ago. *See, e.g., Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 401 (5th Cir. 1981) (describing the highly fact-specific inquiry required to justify relief under Rule 60(b)(6)). Petitioner must also address complex issues of federal habeas law that are relevant to two independent grounds for relief: fraud on the court, as recognized in Rule 60(d)(3), and "extraordinary circumstances" that warrant relief under Rule 60(b)(6). Among other issues, Petitioner must explain why, under still-evolving precedent, Petitioner's Rule 60 Motion is not effectively a "successive" petition subject to 28 U.S.C. § 2244. Finally, to demonstrate that Petitioner's underlying claims for habeas relief have merit, Petitioner must preview his claim of ineffective assistance of trial counsel under *Wiggins v. Smith*, 539 U.S. 510 (2003), including (1) the numerous deficiencies in trial counsel's performance during the sentencing phase of Preyor's case; (2) the results of appointed counsel's extensive—but ongoing—mitigation investigation; and (3) the reasons why state postconviction counsel was ineffective for failing to raise this claim, excusing any procedural default. Thus, given the number and complexity of the issues underlying Petitioner's Rule 60 Motion, additional pages are necessary to thoroughly brief the court.

4. Further, the need for thorough briefing is particularly acute in this case, where the Petitioner is facing imminent execution and Petitioner's former attorneys never investigated or presented the facts and grounds for relief that Petitioner's Rule 60 Motion sets out.

5. The length of Petitioner's Rule 60 Motion is not unusual. Courts have freely allowed Rule 60 motions exceeding the standard page limit under similar circumstances. *See, e.g.,* Petitioner's Rule 60(b) Mot. to Reopen Judgment and Inc. Mem. of Law, *Edwards v. Stephens*, 3:10-cv-6-M (N.D. Tex. Jan 10, 2017), ECF No. 83 (sixty-eight page Rule 60 motion in death-penalty case); Mot. for Relief from Judgment Pursuant to Fed. R. Civ. P. 60(b)(6), *Balentine v. Thaler*, No. 2:03-cv-0039 (N.D. Tex. July 12, 2012), ECF No. 112 (ninety-eight page Rule 60 motion in death-penalty case); Mot. for Relief from Judgment Pursuant to Fed. R. Civ. P. 60(b)(6), *Buck v. Stephens*, No. 4:04-cv-03965 (S.D. Tex. Jan. 7, 2014), ECF. No. 49 (forty page Rule 60 motion in death-penalty case).

Dated: July 14, 2017

Respectfully submitted,

/s/ Catherine E. Stetson

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*\* Admitted pro hac vice  
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**CERTIFICATE OF CONFERENCE**

I certify that on July 14, 2017, counsel for Petitioner TaiChin Preyor conferred with Erich Dryden of the Office of the Texas Attorney General, to inquire about Respondent's opposition to this motion. He responded that the Respondent is opposed to the motion to exceed the page limitation.

/s/ Catherine E. Stetson  
Catherine E. Stetson

**CERTIFICATE OF SERVICE**

I hereby certify that on July 14, 2017, I electronically filed the foregoing the foregoing document using the ECF system which will send notification of such filing to counsel of record.

/s/ Catherine E. Stetson  
Catherine E. Stetson